

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>OYER G. AND WILLIAM W. LEARY,</p> <p>v.</p> <p>Respondent:</p> <p>WELD COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 51733</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on April 15, 2010, Diane M. DeVries and Karen E. Hart presiding. Oyer G. Leary appeared pro se on behalf of Petitioners. Respondent was represented by Cyndy Giauque, Esq. Petitioners are protesting the 2009 classification of the subject property.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**729 Main Street, Windsor, Colorado
(Weld County Schedule No. R1432086)**

The subject property consists of a former residential dwelling that is now used for commercial office purposes and a detached garage used for storage.

Respondent assigned an actual value of \$168,236.00 and commercial classification to the subject property for tax year 2009. The valuation is not in dispute, only the classification. Petitioners are requesting that the subject property be classified residential.

Petitioner, Mr. Oyer G. Leary, testified that the subject property is zoned residential. Mr. Leary estimates that approximately one-half of the building is occupied and used as an insurance office. Mr. Leary contends that the remainder of the property is used for residential purposes. The kitchen and bathroom facilities are used daily by the insurance staff and there is a couch that can be

used as a bed. There are no beds located at the property. No one lived in the subject property during the base year period or on the assessment date.

Respondent's witness, Mr. Stan Jantz, a commercial appraiser with the Weld County Assessor's office testified that the subject property has been used as an insurance office since 2005, when a building permit was issued to erect an insurance sign at the front of the property. The Assessor has classified and valued the subject property as a commercial office building since 2005. Mr. Jantz verified with the City of Windsor that the subject property zoning is CB, Central Business.

Mr. Jantz inspected the subject property on June 16, 2009. There was no indication of residential use. There was an empty desk in one bedroom and the second bedroom had boxes of storage. The main living area was occupied by the receptionist and secretary. There were no signs of residential furnishings, beds, or clothing. Mr. Jantz did not inspect the basement or garage, only the first floor of the property. Mr. Oyer Leary accompanied Mr. Jantz during the inspection. Mr. Jantz testified that Mr. Leary told him no one lived at the property and the garage was used as storage.

Respondent presented sufficient probative evidence and testimony to prove that the subject property was correctly classified for tax year 2009.

The Board concludes that the predominant use of the subject property is as a commercial office building with perhaps some incidental use for storage of non-insurance related property primarily in the garage. Mr. Leary testified that approximately one-half of the subject property is used as an insurance office on a daily basis and the remaining portion, including the bathroom and kitchen, is used by the insurance office staff and such use should be considered residential. The Board is not convinced that the use of the bathrooms and kitchen by the insurance staff is sufficient to classify the subject property residential.

ORDER:

The petition is denied.

APPEAL:

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation of the respondent county, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

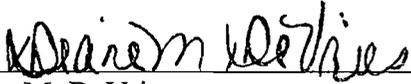
In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

Section 39-8-108(2), C.R.S.

DATED and MAILED this 12th day of May 2010.

BOARD OF ASSESSMENT APPEALS

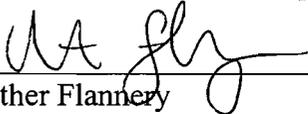


Diane M. DeVries



Karen E. Hart

I hereby certify that this is a true and correct copy of the decision of the Board of Assessment Appeals.



Heather Flannery

